

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

| | | |
|--------------------------------------------------|---|---------------------|
| APPLETON PAPERS INC. and |) | |
| NCR CORPORATION, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 08-CV-00016-WCG |
| |) | |
| GEORGE A. WHITING PAPER COMPANY, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

**CIVIL L. R. 7(h) EXPEDITED NON-DISPOSITIVE MOTION FOR
EXTENSION OF TIME TO FILE PROPOSED FINAL JUDGMENT**

In the October 4, 2012 Order, the Court directed the parties to confer and file a proposed final judgment, or explain why agreement could not be reached. (Dkt. #1437 at 9.)

As explained briefly below, a number of open issues remain that preclude entry of a final judgment at this time. NCR and other parties have been working in good faith to resolve these issues, but further discussions are needed. With additional time, NCR believes that many, if not all, of these issues can be resolved by the parties, without burdening the Court. NCR thus respectfully moves the Court to extend the deadline for filing a joint proposed final judgment, or explaining why agreement could not be reached, until Monday, October 22, 2012. NCR has confirmed that the following parties do not oppose this motion: Appleton Papers Inc.; Georgia-Pacific; CBC Coating, Inc; P.H. Glatfelter Company; Menasha Corp.; U.S. Paper Mills Corp.; Neenah-Menasha Sewerage Commission; City of Appleton; WTM I Company; Kimberly-Clark Corp.; City of Green Bay; Brown County; City of De Pere; Green Bay Packaging; Green Bay Metropolitan Sewerage District; the Proctor & Gamble Paper Products

Company; and Leicht Transfer & Storage Co. Today, NCR notified the other parties of record about the motion, and as of this filing, none of them has informed NCR that it plans to oppose the motion.

As noted, NCR has successfully resolved a number of the open issues. For example, NCR stipulated with Georgia-Pacific and Neenah-Menasha Sewerage Commission as to the amount of the judgment to be entered against NCR. (Dkt. #1423; Dkt. #1429.) NCR has agreed to CBC Coating's proposed judgment amount as well, and expects to enter a stipulation with CBC confirming that amount. NCR has also been negotiating with both Glatfelter and WTM as to insurance offset issues. While an agreement has not been reached with either party, discussions are ongoing.

Notwithstanding these efforts, some issues remain open that prevent entry of final judgment at this time. Some of these issues concern parties that have not been actively involved in *Whiting* since 2009 or 2010, all of whom must be included in the final judgment. NCR has now contacted all of the *Whiting* parties. The key open issues preventing entry of a final judgment are:

1. Throughout this action, numerous parties have moved to dismiss claims (or parts of claims) without prejudice. The Court has granted such relief. (*See, e.g.*, Dkt. #1080; Dkt. #1135; 9/20/2011 Text Order; 11/15/2011 Text Order.) Under Seventh Circuit case law, the grant of that relief likely precludes entry of a final judgment, within the meaning of 28 U.S.C. § 1291. *See, e.g., ITOFCA, Inc. v. MegaTrans Logistics, Inc.*, 235 F.3d 360 (7th Cir. 2000); *Palka v. City of Chicago*, Nos. 09-2042, 09-3796, 2011 WL 4921385 (7th Cir. Oct. 11, 2011); *Arrow Gear Co., v. Downers Grove Sanitary Dist.*, 629 F.3d 633 (7th Cir. 2010). NCR believes that the claims in question must be dismissed with prejudice or resolved on the merits. Based on

NCR's review of the docket, this issue affects the following parties: (1) Menasha; (2) Kimberly-Clark; and (3) certain *De Minimis* Parties—specifically, City of De Pere; George

A. Whiting Paper Co.; Green Bay Metropolitan Sewerage District; Green Bay Packaging; Heart of the Valley Metropolitan Sewerage District; International Paper Co.; Leicht Transfer & Storage Co.; Neenah Foundry; Proctor & Gamble Paper Products Company; and Wisconsin Public Service Corp.

2. Brown County's and City of Green Bay's motions for summary judgment as to NCR/API's contribution claims are still pending. (*See* Dkt. #1080 at 28-29.) City of Green Bay also has a counterclaim pending against NCR, which does not appear to have been the subject of a dispositive motion.

* * *

NCR will bring any other issues of which NCR becomes aware to the attention of the Court on or before October 22, 2012.

Dated: October 15, 2012

Respectfully submitted,

NCR CORPORATION

/s/ Darin P. McAtee

Counsel for NCR Corporation

CRAVATH, SWAINE & MOORE LLP

Evan R. Chesler

Darin P. McAtee

Worldwide Plaza

825 Eighth Avenue

New York, New York 10019

Phone: (212) 474-1000

Fax: (212) 474-3700

dmcatee@cravath.com

SIDLEY AUSTIN LLP

Evan B. Westerfield

One South Dearborn Street

Chicago, Illinois 60603

Phone: (312) 853-7000

Fax: (312) 853-7036

MARTEN LAW PLLC

Linda R. Larson

Bradley M. Marten

1191 Second Avenue, Suite 2200

Seattle, Washington 98101

Phone: (206) 292-2600

Fax: (206) 292-2601